IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1937 OF 1996

Shri Tayab Mohammed Hussain, .. Petitioner.
Vs
1. The State of Maharashtra and ors Respondents
Mr M.P.Shimpi h/f Mr P.K.Dhakephalkar, for the petitioner.
Mr.R.M. Agarwal for respondent no.3.

CORAM : D.B.BHOSALE,J.

DATE : FEBRUARY 23, 2005.

P.C.

1. Heard the learned counsel for the parties.

2. This petition is directed against the order dated 2.12.1995 passed in Misc.Civil Appeal No.93 of 1993, by which the appeal filed by the petitioner-plaintiff was dismissed. That appeal was directed against the judgment and order dated 11.2.1993 passed below Exhibit-5-application in R.C.Suit No.464/1991 filed by the petitioner seeking temporary injunction against the respondents-defendants. Pending the Misc.Civil Appeal, the Appeal Court had granted interim order restraining the respondents-defenants from demolishing the suit structure till the disposal of the appeal. This Court, however, while admitting the petition, granted ad-interim order in terms of prayer clause (b), except the bracketed portion. Prayer

clause (b) including the bracketed portion reads thus:

> "(b) pending the hearing and final disposal of the present petition, restrain the respondents by an order of injunction from giving effect to, (parting) or executing the order passed by the Collector, Thane, dated 22-04-1991"

By that order, the respondents were restrained from giving effect to the order passed by the Collector, Thane, dated 24.2.1994. By order dated 24.2.1994 the Collector had declared the Resolution passed by the Standing Committee, by which the construction of the disputed structure was regularised, as illegal. By virtue of the interim order passed by this Court, the learned counsel for the petitioner, submits that no action whatsoever was taken against the disputed structure and he, therefore, prayed that the interim order passed by this Court on 21.6.1996 be continued till the disposal of the suit. Mr Agarwal, learned counsel for respondent no.3, has not opposed the prayer made by the petitioner. However, he submitted that the trial Court be directed to decide the suit within timeframe.

3. After having considered the submissions made by the learned counsel for the parties and the overall facts and circumstances of the case, I am satisfied that the following order will meet the ends of justice.

(i) The trial Court shall endeavour to decide Regular Civil Suit No.464 of 1995 as expeditiously as possible and preferably within a period of one year from the date of receipt of this order.

(ii) The trial Court shall decide the suit on merits in accordance with law and uninfluenced by the observations made in the order passed in the proceedings arising out of Exhibit-5 application.

(iii) The interim order that was granted by this Court on 21.6.1996, to remain operative till the disposal of the suit.

(iv) The writ petition is disposed of in the aforesaid terms. Rule stands discharged.

(D.B.Bhosale, J.)